Compensation Advisory Committee

Report and Recommendations 1988

Ministry of
Attorney General

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SUMMARY OF RECOMMENDATIONS

SALARIES

1. Effective January 1, 1989, the salary for Puisne Provincial Court Judges be set at $91,339.00 per annum, an increase of four percent.

2. The Chief Judge of the Provincial Court of British Columbia continue to receive an additional salary of $6,500.00 per annum, bringing his gross pay to $97,839.00 per annum; while the Associate Chief Judge(s) receive an additional $4,000.00 per annum, resulting in a gross pay of $95,339.00 per annum.

3. Effective January 1, 1990, a further four percent increase be granted to all Provincial Court Judges, resulting in per annum salaries of $94,993.00 for Puisne Judges; $101,493.00 for the Chief Provincial Court Judge; and $98,993.00 for Associate Chief Judge(s).

OTHER COMPENSATORY BENEFITS

4. There be no changes in the current practice as concerns Annual Vacations, Sabbaticals, or Travel/Meal Allowances.

PENSIONS

5. The administration of pension benefits for Provincial Court Judges remain under the Pension (Public Service) Act, Revised Statutes of British Columbia, as modified by provisions of the Provincial Court Act, Revised Statutes of British Columbia.

6. The contribution level to the pension plan by Provincial Court Judges remain at 7% of earned salary.

7. Pension benefits calculations for Provincial Court Judges should be based on the best three years of earnings, rather than the current five-year average.

8. An option for early retirement at age 55 rather than the current age 60 should be made available to Provincial Court Judges, pursuant to the Pension (Public Service) Act, without the penalty of 5% for each year of the retiree's age below 60 years, as modified by the Provincial Court Act with appropriate amendments to the said Act.

9. A deferred pension option be made available to Provincial Court Judges who have completed ten years of service, at age 55, rather than the current age 60.

10. No changes be made in the current benefits options as available pursuant to present legislation and practice.

OTHER RETIREMENT BENEFITS

11. (a) The current Group Life Insurance coverage be extended from age 65 to age 70 for those Provincial Court Judges who continue to serve on the Bench, based on the present cost sharing formula.

    (b) Group Life Insurance coverage be made available to retired Provincial Court Judges up to age 70, with premiums fully payable by the retiree.

12. Long Term Disability Insurance be changed from the current two-thirds of the first $2,200.00 plus 50% of the balance, premiums for which are currently paid by the employer, to provide coverage based on 60% of salary with the Judge's paying premiums in full, which would result in benefits being income tax free.

I. APPOINTMENT AND TERMS OF REFERENCE

The 1988 Compensatory Advisory Committee (the "Committee") was established pursuant to Section 7.1 of the Provincial Court Act, R.S.B.C. 1979, c. 341, "to make a report to the Attorney General not later than December 31 in the year in which it is appointed, on all matters respecting the remuneration, allowances and benefits of Judges of the Court, and to make recommendations with respect to those matters."

Pursuant to this legislation, under authority of letters of appointment from the Deputy Attorney General dated October 11, 1988, the following three persons were named as the Committee:

Don Kidd - Chairman
Oksana Exell - Member
Joe Hutton - Member

Named as resource persons by the Committee were Robert C. Hunter, Q.C., as legal counsel, along with Mr. Ian Batey, an employee of the Ministry of Attorney General, Personnel Services Branch, who performed the duties of Committee Secretary and Co-ordinator, carrying out the needs and requests of the Committee in a most enthusiastic and diligent manner, for which we are most appreciative.

In addition, due to advance knowledge that pensions, as well as salary, were to be the dominant issues for consideration by the Committee, it was deemed advisable to consult with Mr. John Cook, Superannuation Commissioner for the Province of British Columbia, who attended at one Committee meeting (November 17, 1988) and one day of the formal hearings (December 14, 1988). We are most appreciative of the guidance offered by Mr. Cook. His extensive knowledge of the pension systems throughout Canada has been of immeasurable assistance. Although the Ministry of Attorney General did provide the resource assistance outlined above, no briefings or other directives were issued by the Ministry or the Government, and, as was the case with the original Committee established in 1986, neither party made submissions to the Committee.

The Committee did, therefore, carry out its duties in a totally independent manner, carrying on no discussions with anyone in the Government, with the exception of Mr. Cook as previously outlined, who was subsequently made available at the formal hearings herein for consultation, questioning or other advice as deemed fit by the Judiciary or the Committee.

The Committee held meetings as follows:

1. October 25, 1988, Victoria
   Chairman & Counsel, with Resource Co-ordinator;

2. November 17, 1988, Vancouver
   Committee Organizational Meeting;

3. November 27, 1988, Prince George
   Court Familiarization Tour;

4. November 28, 1988 - December 1, 1988
   Vancouver and Lower Mainland (4 locations)
   Court Familiarization Tour;

5. December 12 - 14, 1988, Vancouver
   Formal Hearings and Committee Meetings.

II. THE REVIEW PROCESS

As previously outlined, due to the totally independent manner in which the Committee was allowed to carry out its mandate, we were free to devise our own methodology to approaching the issues and preparing our recommendations.

For this purpose, an organizational meeting was held in Vancouver on November 17, 1988, the first time the Committee got to meet and know one another, at which time it was agreed that the Committee would basically follow the format established by the 1986 Committee, that being:

1. The Committee would conduct a series of informal meetings with Provincial Court Judges in various areas of the Province, so as to review the judicial process and other relevant issues. Several locations in various geographic areas were selected, with the understanding that as soon as the Committee members felt they had sufficient information so as to adequately understand the Court process, the remainder of the proposed visitations would be cancelled.

   Upon the completion of four days of visitations, including Prince George, 222 Main Street in Vancouver, the Small Claims Division in Vancouver, the Family Court in Vancouver, and the Surrey Provincial Court, the Committee did not deem it necessary to proceed to any further sites. These visitations were arranged and accompanied by Associate Chief Judge Ken Page for which the Committee offers their sincere appreciation.

2. Formal presentations would be heard from the Provincial Chief Judge and Associates, the Provincial Court Judges Association, the British Columbia Law Society, the British Columbia Branch of the Canadian Bar Association, and the Judicial Council of British Columbia, all of whom would, it was assumed, be speaking on behalf of the Judges.

Subsequently, submissions were received as follows:

a. Chief Provincial Court Judge Bruce Josephson;
b. Dennis Mitchell, Q.C. - Treasurer, B.C. Law Society;
c. Jim Vilvang - President, B.C. Branch Canadian Bar Association;
d. Jacob Brouwer and Maria Waters - Judicial Council of British Columbia; and
e. Eric Harris - Counsel for Provincial Court Judges Association

3. A review would be made of relevant reports from other jurisdictions dealing with the same issues, including the 1987 Commission report on Federal Judges' Salaries and Benefits, and the recently concluded report of the Ontario Provincial Courts Committee.

4. To obtain pertinent statistical information as available through the Court Services Branch of the Ministry of Attorney General in Victoria. (It should be noted that the only statistics subsequently taken into consideration were the workload statistics for the years 1985 to 1988, inclusive.) These statistics indicate that although there has been a slight decline in all areas, there is little variance in total overall new case activity from 1985 to 1987 (the last complete year for which statistics are available). A projection of current 1988 statistics would indicate this trend is continuing.

5. To obtain pertinent information, as available, which would provide updates concerning the activities of the Consumer Price Index and the Industrial Composite Index during the past year.

6. In addition, because the transcripts from the complete 1986 hearings were available, it was deemed advisable to study these in some depth, as considerable detail was provided therein outlining the history of the Provincial Court within the Province of British Columbia.

III. CONTEXT OF THE REVIEW

A. 1986 was the first year in which a Compensatory Advisory Committee was established in British Columbia, pursuant to legislation passed in the Spring of that same year.

Subsequent to the report filed by that Committee, as a result of submissions made by the then Attorney General, the Select Standing Committee on Labour, Justice and Intergovernmental Relations on June 18, 1987, recommended the following salary adjustments for Provincial Court Judges to the legislature, which recommendations were duly implemented:

1. A "catch up" retroactive adjustment of 3% for the calendar year 1986, plus a further 5% (which compounds to 8.1%) to bring the total salary for the year 1986 to $79,661.00, an increase from the previous $73,659.00.

2. A further 5% increase be granted for the year 1987, bringing the 1987 salary up to $83,644.00.

3. An additional 5% for the year 1988, thus bringing the current salary for Puisne Judges to $87,826.00.

Thus, Provincial Court Judges in British Columbia have enjoyed salary adjustments as follows over the past three years:

1986 + 8.1%
1987 + 5.0%
1988 + 5.0%

On the issue of salaries alone (exclusive of any other benefits), British Columbia Judges currently rank fourth, being outranked only by Alberta, Quebec, and the Northwest Territories. We are, however, aware that recommendations have recently gone to the Ontario Government suggesting that rather significant increases may

be in order (in excess of 25%). We have no indication, of course, as to what will transpire as a result of those recommendations, but in the event they are implemented, British Columbia would then rank fifth in Canada at the time of these hearings, i.e. subsequent to any recommendations this Committee might make as to salary adjustments within British Columbia.

B. Pension and related benefits have been an area of contention for some years now and the Judges have expressed their total dissatisfaction with the lack of progress to date on this very important issue, which was still under consideration in 1986 and thus not addressed by the Committee of that date.

It is in this context, along with the relatively large increases recently granted to federally appointed Judges in early 1987, that the Judges in British Columbia make presentations suggesting that consideration be given to parity with County Court Judges, or failing that, the differential between the two levels of the Bench be diminished by granting substantial increases to the Provincial Court Judges in British Columbia.

IV. PRINCIPLES AND OTHER CONSIDERATION

A compensation policy for Provincial Court Judges must be responsive both to the needs of the professionals within the justice system and to the community or society they serve.

In the case of the latter, compensation must accurately reflect the values attributed to the judicial system by our society, for they will be the terms of reference on which the Legislature predicates its compensation decisions. If these values are misinterpreted there will be a greater chance of political, administrative and service failure in the delivery of justice.

The appointment of a non-partisan committee to review judicial compensation is a manifestation of the importance society places on the preservation of judicial independence.

The independence of the judiciary was not a matter of concern for the compensation committee. The committee assumed its work on the presumption that it is in the interest of our society to have judges compensated at such a level that they could provide for the most basic needs of themselves and their family. It was recognized that the converse could be open to political interference.

Furthermore, (1) tenure of judges' salaries is secure from government interference because it is set by legislation, (2) salaries are established by the Legislature and not the Executive, and (3) there has been no attempt by the committee to base compensation on job performance.

The committee agrees with the Law Society Submission in which the preamble to the Charter is paraphrased as follows, "we and our institutions remain free only when our freedom is founded upon respect for moral and spiritual values, and on the rule of law." The Courts are the guardians of the rule of law and as such require the utmost trust and respect in a democratic society.

British Columbians do put a high value on the competence of the judiciary and the effectiveness of the Provincial Court system in this Province. Therefore, the committee embodied the principles of equity, fairness and public accountability in its deliberations.

However, equity and fairness become difficult to interpret in the absence of any comparative or quantifiable measures.

All those making submissions to this Committee reminded Committee members of several dominant principles which we should bear in mind during our deliberations concerning compensation packages for any Judges, and without quoting complete citations, these main principles were outlined as follows:

1. Treating Professionals as Professionals

With respect to the governing principles of treating professionals as professionals, the Ontario Provincial Courts Committee considered the following:

> "...the remuneration that Judges receive has to be sufficiently generous, and be perceived by both the Judges and the public to be sufficiently generous, to signify materially the public's awareness of the importance of the functions of the Provincial Judiciary and its respect for the qualifications and the expertise of the Judges themselves. Meeting this requirement may occasion some small measure of financial discomfort for the Provincial Government. Such discomfort should be tolerated; it is, after all, a measure of the significance the Province ascribes to the Provincial Court's contribution to the Justice system.
>
> Second, the Judges' working year should be structured to recognize that quality work takes time. Judges should have sufficient opportunities for research and reflection. Because of the parallel principle of judicial independence,

such opportunities ought ordinarily to be allocated by the Senior Provincial Judiciary, not by officials in the Provincial Government."

The final general principle adopted by the Ontario Committee was to look at the total compensation package of Judges as a whole. This principle is consistent with the principles adopted by interest arbitrators in setting compensation for other groups.

2. Adequacy

As stated in the submission of the Provincial Court Judges' Association, the Report and Recommendations of the Commission on Judges and Salaries and Benefits of 1983, which was submitted to the Minister of Justice of Canada, contained the following statement on Page 2:

> "Parliament should fix judicial salaries and benefits in a manner and in an amount which ensures financial security for a Judge and his family. The level of salary and benefits should also be such that the most able members of the practicing Bar may be induced to accept appointment to the Bench without being expected to accept a major reduction in their standard of living. The office of Judge has attached to it security, public service, the power to contribute to legal development and prestige. That prestige might not persist in full, however, should a marked difference in the level of remuneration of Lawyers and Judges continue, particularly if this were perceived to be a major factor in leading many able Counsel to refuse appointment to the Bench."

3. Independence

In 1985, the Canadian Bar Association established a special Committee to report on the independence of the Judiciary in Canada. In that report, it was stated:

"One of the most obvious ways to influence a Judge is to manipulate his salary. If a Judge knows his paymasters can stop his salary if they are unhappy with his Judgments, he may be tempted to deliver Judgments to their liking. And regardless of the behaviour of the Judge, there will always be suspicion in the mind of the public that the Judge has been influenced. The only way to avoid this problem is to guarantee the amount and the regular payment of Judicial salaries."

4. Attracting Appointees

As was stated in the Report of the Judicial Council of British Columbia to the Attorney General for British Columbia, Report No. 1, dated March 30, 1984, on Page 2:

"In arriving at our recommendations we have kept in mind two fundamental cornerstones of our Judicial system, independence and quality. It is in the interests of all citizens that our Judges be paid sufficiently to ensure their financial independence and to give them the status and quality of life that will make their positions attractive to the Judges from whom we hope and expect good service and to first rate Lawyers who we hope will wish to become Judges."

5. Society Expectations

On Page 9 of the Report of the 1986 Advisory Committee it was stated:

"Society asks Judges to perform a unique function; that is, within the framework of the law to pronounce Judgment on the actions of their fellow humans. Judges of the Provincial Court must communicate effectively with a broad range of society that they see in Court but must do so with dignity and in a manner which commands respect. Furthermore, particular social

constraints are properly expected of Judges. These are well described in the Lang Report and are characterized as a withdrawal from many kinds of social interaction normally enjoyed by the average citizen.

Because of these expectations and constraints society must, therefore, reciprocate by providing to the Judges evidence of their worth to society in the form of reasonable salary and benefits. Judges must be elevated to an extent which removes them from trivial personal financial concerns; that is, enough to be Judicial in their demeanor but not so excessively lofty as to lose the common touch. A well chosen and valuable Judge has sacrificed both the freedom and the financial rewards enjoyed by a successful Lawyer. Those Lawyers who become Judges should not be asked to sacrifice further with inadequate salary and benefits."

This Committee has no problem in accepting the preceding as our guiding principles, and feel we have given them every consideration in arriving at our subsequent recommendations. In accepting these principles, the Committee takes note that all those making submissions included two dominant factors as the main criteria for our consideration:

1. The need to attract the most able members of the practicing bar to accept appointments to the Bench; and

2. The need to remunerate the Judges sufficiently so as to ensure a degree of financial security and independence, thus discouraging them from leaving the Bench to return to private practice where the remuneration "might" (our italics) be more favourable.

The Committee turned to four major areas of influence on interpretation of the above assumptions: economic considerations, organizational considerations, social and ethical considerations, and comparability with other jurisdictions, including County Court:

1. Economic Considerations

Remuneration for Provincial Court Judges must be sufficiently generous and be perceived by both the Judges and the public to be sufficiently generous as to signify materially the public's awareness of the importance of the functions of the Provincial Judiciary and its respect for the qualification and expertise of the Judges themselves.

One measure of what constitutes a generous remuneration would be the demand for positions on the Bench and the quality of the candidates (both successful and unsuccessful).

Economic considerations also means that the Provincial Court should be competitive with the outside sector in attracting the kind of individuals who may be suited to the Bench. This implies that compensation be based on some form of comparison with competing agencies.

To be competitive one must look to potential private sector candidates to determine whether there is some comparability in both wage and non-wage elements of compensation between the Bench and the private sector. There are also at least two judicial or quasi-judicial public sector positions that are worth considering - the Auditor General and Ombudsman.

Recognizing that compensation is not the only measure of qualification, the Committee was encouraged to see that Provincial Court salaries were not a disincentive in attracting a variety of qualified candidates from both the private and public sectors.

2. Organizational Considerations

Compensation is only one subsystem of a network of systems of management that are essential for the well-being of individuals or professionals in the workplace.

During its visitations to various Courts around the Province, the Committee realized that there are inadequacies within the Court system that detract from the job satisfaction. Some of the greatest frustrations come from poor Court scheduling, inadequate time-off, poor facilities and resources. Although it is not within the purview of the Committee to make recommendations on these areas, they are integral to the job satisfaction of the Provincial Court Judges and have an impact on the compensation discussions.

Recognizing that many of the issues can be addressed by the Attorney General's Ministry (e.g. ad hoc Crown Counsel, Court scheduling, etc.) the Committee feels that they should be identified in this report.

With respect to suggestions within the recently issued Hughes report, "Access to Justice", that changes might take place within the Judicial systems in British Columbia which would have a bearing on the Provincial Court responsibilities, we say that these are recommendations only and may never by implemented, or if implemented may be so far in the future as to not warrant consideration at this particular time. Should any, or all, of these recommendations subsequently be implemented, they may rightfully be the subject of future compensation reviews.

3. Social and Ethical Considerations

The Courts have a special role in a democratic society and there is an obligation to treat those charged with the responsibility to deliver the Court services in a manner that communicates and elevates the ideals and goals of an enlightened democratic society.

However, status will be preserved with the selection to the Bench of individuals of high moral character who accept appointments in the spirit of public service. For these professionals, other than financial considerations will influence their decision to sit on the Bench.

The pursuit of status must be balanced against social considerations. Public compensation policy must reflect certain precepts:

a. That the state is the guardian of the public interest;
b. That the state as employer and as manager of the provincial economy must be reconciled; and,
c. That the principle of public accountability on compensation expenditures must be adhered to.

It is the confluence of these three precepts, namely as an equitable and fair employer, protector of the public interest, and of public accountability which were the most prominent in influencing the Committee's compensation decisions for the Provincial Bench.

The elected representatives of the Legislature and more accurately of the Executive will be held accountable to the people of British Columbia. It is therefore the priority of those who are accountable to the electorate to deliver services within a framework of provincial fiscal priorities that have been mandated by the people of British Columbia.

In the final analysis, the notion of public interest is paramount. The public interest requires that the provision of efficient and quality services must be at a cost the public can bear.

4. Comparability

The Provincial Court Judges Association submitted that the salaries of County Court Judges are the most valid comparison to measure Provincial Court Judges' remuneration.

Comparability is an important criterion governing the determination of wages in the public sector. Unlike in the private sector, the output of public institutions is not shaped by conventional market forces. The lack of product market-related pay determinations apparently

requires one to address comparability as a form of wage-setting. A public institution must compete for professionals in the labour marketplace and is thus constrained to pay wages at least approximating those existing in the marketplace.

In order for the comparability principle to be most effective it must allow productivity and efficiency to enter into the equation. Equal pay does not mean equal work.

The Committee was hampered from making effective use of this principle since there was no means of properly comparing the complexity, volume of work and degree of responsibility of the two levels of Courts. The Committee was given neither the authority nor information to satisfy itself that remuneration for Judges of the County Court is at an appropriate level at present.

More importantly, the marketplace from which the professionals would be recruited would be British Columbia. Decisions affecting the salaries of Provincial Court Judges must be made separately from those made at a Federal level. There should not be any automatic link.

Regardless of the outcome of recommendations from other provincial jurisdictions, or even federal jurisdictions, this Committee is of the opinion that our recommendations should reflect the current economic and fiscal climate of British Columbia, and only British Columbia. Economic and other conditions obviously vary substantially between various provincial jurisdictions, and we see no sound basis to take into account the ways in which situations within British Columbia may resemble, or indeed differ, from situations elsewhere. Instead, we have endeavoured to base our recommendations on the status, structure and working conditions of the British Columbia Courts only, and in support of this we have considerable empirical data available to us.

We are fortified in a "made in British Columbia" approach:

(a) Mr. Eric Harris, Counsel for the Provincial Court Judges' Association, stated a wide range of remuneration paid to Lawyers who are the persons that would be valuable additions to the Bench, i.e. who the system would attempt to attract. He stated a wide range of figures and stated particularly that some Lawyers in Toronto were earning $100,000.00 per annum more than Vancouver Lawyers;

(b) The cost of living for Toronto and other areas of Canada is significantly higher than that experienced in the City of Vancouver during the past year. Consumer Price Indexes for Canada during the last four months of 1988 were as indicated below, with that for Vancouver following in brackets:

September	4.1	(3.7)
October	4.2	(3.7)
November	4.1	(3.5)
December	4.0	(3.4)

(c) The economic activity of British Columbia is much different.

The Committee took into consideration that to attract a high calibre of seasoned and experienced professionals, pension benefits were a priority in the compensation package.

Ongoing pension studies have been underway between the Government and the Judges since 1984, and since these reviews were considered as still being active in 1986, the Compensation Advisory Committee of that year did not deal with the issue. It is paramountly obvious that pensions are a very important element before these proceedings, which can no longer be ignored. Thus, this Committee is giving considerable emphasis to pensions and benefits within our recommendations, and which are covered more fully in Section "C" of Specific Recommendations which follows.

In considering these and other criteria involved in determining the adequacy, or otherwise, of Judicial remuneration, the Committee takes note of the fact that since 1974 only two Judges have chosen to leave the Bench to return to private practice; and the fact that there are currently 49 members of the practicing bar who have qualified to meet the "approved" category for appointment to the Provincial Court Bench, albeit, in the interim since their interviews, some may have chosen other career paths. The process of appointing Provincial Court Judges is provided under Section 5 of the Provincial Court Act, and provides the applicant must be a member of the Law Society of British Columbia for a minimum of 5 years and after an interview by the Judicial Council be approved by the Council. The names of those persons approved are then forwarded to the Lieutenant Governor in Council who acts on those recommendations.

The composition of the Judicial Council is extremely important and is provided for under Section 12(2) of the Provincial Court Act, as follows:

> 12.(2) The members of the Council are:
>
> (a) the Chief Judge as presiding member,
>
> (b) the Associate Chief Judge as alternate presiding member, or where 2 or more Associate Chief Judges are designated, the Associate Chief Judge designated as alternate presiding member by the Lieutenant Governor in Council,
>
> (c) the Treasurer of the Law Society of British Columbia or a person nominated by him,
>
> (d) the President of the British Columbia Branch of the Canadian Bar Association or a person nominated by him, and
>
> (e) by appointment of the Lieutenant Governor in Council for a term not exceeding 3 years, a Judge and not more than 4 other persons.

We wish to emphasize the composition of the Judicial Council as being the most qualified persons garnered from the legal profession and the Judges of the Province of British Columbia, and who appeared before the Committee and made representations on behalf of the Judges. We also were fortunate to hear from two lay members of the Judicial Council, namely Mr. Jacob Brouwer and Ms. Maria Waters. We were assured, and are content in that assurance, that the persons who have been approved by the Judicial Council for appointment to the Bench are of the highest calibre.

With the preceding in mind, the Committee does not feel that past or current compensation rates have been a deterrent in attracting suitable applications to the Bench, nor in creating such an unacceptable financial situation as to encourage resignations for any reason.

V. Specific Recommendations

A. SALARIES

In general, a comparison between positions is aimed at determining the actual price of the desired services and therefore necessarily must encompass all elements of compensation.

Comparability as a criterion is not meaningful without considering "total compensation" as the aggregate cost of the positions. This would include both wage and benefits, as well as non-monetary aspects of employment, job security, leave, allowances, etc. In the case of Provincial Court Judges, benefits would approximate an additional 37% in compensation.

Although the value of the total compensation package would be applied, it is not necessary to have strict comparability on all elements of the package. From a strictly economic perspective, comparability should be flexible enough to accommodate relative variations in the compensation package while still remaining competitive.

In the process of determining a recommended salary figure, the Committee takes cognizance of the fact that, in our opinion, there is no need for a "catch up" adjustment. This was granted in 1986 and, with the subsequent increases of 5% in each of 1987 and 1988, has allowed the Judges to keep pace with, if not go ahead of, cost of living increases experienced over the past several years. Thus, our minds are directed to proposed salaries for the years 1989 and subsequent.

With this is mind, the Committee takes note of the fact that the Canadian Consumer Price Index for the year 1988 amounted to 4%, which is the amount used in determining recent increases for federal Members of Parliament, while the Vancouver increase in the Consumer

Price Index for the same year amounted to 3.4% which, in our opinion, is the base amount upon which we should consider our recommendations.

It is the opinion of this Committee that our recommendations, while retaining the current status whereby British Columbia Judges remain at the forefront in total compensation packages, they not lead the country, a desired position in our opinion, considering the current economic and fiscal status of British Columbia.

RECOMMENDATION #1

The Committee recommendation, therefore, is that for the calendar year commencing January 1, 1989, the Puisne Judges of the Provincial Court of British Columbia receive a salary increase of 4 percent, bringing the annual salary figure to $91,339.00.

RECOMMENDATION #2

The Committee accepts the principal whereby the Chief Judge and Associate Chief Judge(s) should receive additional remuneration as compensation for the additional responsibilities of their respective positions. It is therefore recommended that the Chief Judge continue to receive an additional $6,500.00 per annum, while the Associate Chief Judge(s) receive an additional $4,000.00 per annum.

In the event these two recommendations are accepted, subject to the ultimate settlement in the Province of Ontario, it will result in British Columbia moving from fourth to second in salary rankings amongst Provincial Court Judges in Canada, a desired position in our estimation.

Even assuming Ontario may grant the exceedingly high increase recommended, British Columbia Judges would still rank third in Canada.

RECOMMENDATION #3

For the year 1990, commencing January 1, 1990, we recommend a further increase of 4%, bringing the annual salary figure for that year to $94,992.00 for Puisne Judges, with the pay differential for the Chief Judge & Associate Chief Judge(s) to remain as is.

B. OTHER COMPENSATION

RECOMMENDATION #4

Upon a review of the current status, and receiving no submissions to the contrary, it is the recommendation of this Committee there be no changes in the present practice as concerns Annual Vacation, Sabbaticals, or Travel/Meal Allowances.

C. PENSIONS AND RELATED BENEFITS

The Compensation arrangements for Provincial Court Judges has been an ongoing concern for many years. The report of the Judicial Council of British Columbia to the Attorney General for British Columbia, Report No. 1, dated March 30, 1984, states, at Page 5:

> "Adequate remuneration including reasonable pensions are the best ways to assure the flow of top-notch lawyers to the Provincial Court Bench and to keep them there."

Our Committee has accepted that statement as a valid context in which to consider the adequacy of current pension arrangements. We also recognize that the salary and benefits paid during a judicial appointment are necessarily linked to the compensation arrangements after retirement, and that our recommendations in respect to pensions must have validity in the overall continuum of remuneration both before and after retirement.

I. BACKGROUND

In the Federal arena, pension arrangements currently in force evolved from a process begun with the report of a Special Advisory Committee chaired by Mr. Justice Emmett Hall in 1974; and continued by the Dorfman Committee on Judicial Compensation and Related Matters, which reported in November, 1978; the report of the deGrandpre Committee on Judicial Annuities of December, 1981; and the Commission on Judges Salaries and Benefits, known as the Lang Commission which reported in October, 1983. The pension arrangements which currently exist for federally appointed judges were the result of the 1986 Commission on Judges Salaries and Benefits which completed its recommendations on February 22, 1987.

In general terms, the latter report recommended that a pension equal to two-thirds of salary at retirement be available to a retiree at age 60 with a minimum service of twenty years on the Bench and that the surviving spouse of a Judge who dies after retirement should receive 60% of the retired Judge's pension.

In the Province of Ontario, which is a similar Court system to that of British Columbia, the Ontario Provincial Court Committee appointed on July 21, 1987, under Section 88 of the Courts of Justice Act, 1984, issued its report of September 22, 1988, with the following recommendations:

(a) that Judges who serve at least fifteen years be eligible for a full pension at age 65.
(b) that full pension entitlement would be equivalent to 55% of final salary.
(c) that an additional .5% of final salary be added to the 55% for each year service beyond fifteen years.
(d) that a provision be carried over from the existing plan whereby an additional 1% of final salary be added to the final pension amount for each year of full time service beyond the age of 65.

(e) that survivor benefits for spouses be increased to 60% of the Judge's entitlement.

In British Columbia, the same evolutionary process has been evident. On January 16, 1984, the then Attorney General requested an inquiry and recommendations from the Judicial Council of British Columbia and the section of that report relating specifically to pensions, known as "Report No. 3", was submitted on November 15, 1985. The report was still under consideration by the Attorney General during deliberations by the 1986 Compensation Advisory Committee, the first committee to be appointed under Section 7.1 of the Provincial Court Act, which was passed by the legislature in July, 1986. Therefore, the pension issue was not addressed in the report of the 1986 Compensation Advisory Committee and the present Committee is the first one to do so.

II. CURRENT STATUS

At present, pensions of Provincial Court Judges are governed by the Pension (Public Service) Act, which is the statute under which public sector pensions are administered. In addition, modifications to the plan have been impacted by the Provincial Court Act. The significant provisions of the existing plan are as follows:

(a) Pension calculation is based on a five-year earnings average.

(b) The entitlement is calculated at 2% of the average earnings times the number of years of pensionable employment. The modification imposed by virtue of Section 11(8) of the Provincial Court Act provides that pensionable employment equals 1.5 times actual service.

(c) Pension eligibility commences at age 60 with a minimum of ten years of service.

(d) The maximum pension is 70% of average earnings and requires thirty-five years of pensionable employment or 23.3 years of actual service.

(e) The pension entitlement is subject to a set-off for the amount of the Canada Pension Plan benefits received by the retiree.

(f) The actual amount of the retiree's income and the survivor benefits are further modified by the impact of a series of options from which the retiree makes a selection at retirement.

While Report No. 3 of the Judicial Council of British Columbia has not yet resulted in any modifications to the existing pension program, we have paid particular attention to its premises and conclusions as a document best representing the particular needs and concerns of the British Columbia Provincial Court Judges. In its Report No. 3, the Judicial Council predicated its deliberations on three major concerns:

1. Adequacy

The Council's report draws from the Declaration on the Independence of Justice in Canada of the Canadian Bar Association, which states, in part:

> "... The pension of Judges and deceased Judges' spouses shall be adequate, commensurate with their status, dignity and the responsibility of their office, and be regularly adjusted to account for price increases."
>
> (See the Canadian Bar Association Committee report on the Independence of the Judiciary in Canada, August 20, 1985, at Page 63)

As a matter of principle, we concur completely with this view. It is, however, in the quantification of adequacy that problems arise. The Judicial Council report relies substantially on an analytical document prepared by The Wyatt Company, Consulting Actuaries. The essence of the consultant's report is to establish a model pension plan for British Columbia Provincial Court Judges. In their report, under Section IV, "Redesign Considerations and Guidelines", on Page 6, they have set out the following criteria:

> "I. A retirement income target should be established and defined in relation to the level of earnings in the year of retirement. The concept of basing a pension on average salaries has developed out of the private pension plan sector and is not relevant in the determination of adequate judicial pensions.
>
> II. The retirement income target should be established at a level not exceeding 66 2/3% of salary in the year of retirement. The retirement income level of Federal Judges is set at 66 2/3% of salary and this is probably a pragmatic upper-bound to the range of possibilities.
>
> III. The concept of judicial pensions being a function of years of service does not appear appropriate to the circumstances of

Provincial Court Judges. It appears more appropriate that all Judges receive the same pension after a specified minimum period of service (e.g. 10 or 15 years). This practice would be consistent with the plan for Federal Judges and that proposed for Ontario Provincial Judges."

Based on these considerations, inter alia, the Council recommended that pensions be based on the level of earnings in the year of retirement and that retirement income be at a level of 2/3 of the salary in the year of retirement.

We are sympathetic to the notion that a calculation of retirement income based on an average of five years' earnings can be punitive. Currently, the five-year average earnings is $75,759.00, which carries an immediate reduction of 13.74% of current salary into the calculation for pension benefits. We feel that this discount is due more to the exclusion of amounts previously paid under the Judicial Benefits Act from the averaging calculation and the increase of 25% in total remuneration over the five-year period than to the mechanics of averaging itself. Presumably, a regular process of recommendations by Compensation Advisory Committees and the consequent adjustments by Government will cause an averaging calculation to be less dramatic.

A retirement income target of 66.7% of income at retirement seems, at first glance, to be a significant improvement over the current pension which represents about 48% of income at retirement for a Judge eligible for maximum benefits. However, when both of these are expressed in terms of after-tax disposable income available to the retiree, the comparison is more meaningful and, in our view, more relevant:

	Current Plan	2/3 Plan
Gross Pension	$ 48,709.00	$ 58,551.00
C.P.P. and O.A.S.	$ 10,238.00	$ 10,238.00
Income for Tax Purposes	$ 58,947.00	$ 68,789.00
Income Taxes	$ 16,051.00	$ 21,297.00
Disposable Pension Income	$ 42,896.00	$ 47,492.00
% of Disposable Final Salary	81%	90%

The above analysis is based on a retiree entitled to a full spousal deduction. Based on a 1988 salary of $87,826.00 and normal deductions and tax credits, the disposable after-tax earnings of a Judge would be about $53,000.00 (Schedule 1). Therefore, the existing pension plan at its maximum entitlement yields a benefit of disposable income within $400.00 per month of that of the benefit level described by the Wyatt Report as "... a pragmatic upper-bound to the range of possibilities".

We find the concept of judicial pensions being related solely to a basic minimum qualifying term of service to be troublesome. Some of our members have had difficulty understanding the principle of equability which is a basic component of the salary structure and the extension of that principle to pension benefits is not compelling. While a given level of current service compensation can perhaps be justified by a consistent level of excellence achieved in the administration of justice, pension entitlements should still be based on length of service.

2. Attraction of Appointees

The Judicial Council Report No. 3 indicates that the best interests of justice would be served by attracting appointees in the age group from 45 to 55 years and the most desirable candidates would be giving up substantial income in order to accept an appointment to the Bench. We have been given a wide range of earnings that the desirable candidates may currently be earning. Mr. Mitchell's presentation on behalf of the Law Society of British Columbia quoted the average income for lawyers in the Province of British Columbia, taken from Revenue Canada statistics, at $66,000.00 per year, while Mr. Harris, speaking for the Provincial Court Judges Association, stated that two separate consultants' reports have indicated median net incomes of partners in Vancouver law firms to be approximately $145,000.00. Mr. Harris agreed to provide us with some extracts from these studies, but they were not received by the Committee. Since we were not presented with any objective evidence as to the opportunity

costs faced by a qualified member of the Bar in accepting an appointment to the Bench, we must reach our own conclusions. Assuming that the evaluation process used by the Judicial Council produces potential appointees with that unique combination of age, wisdom and experience, which maintains the high calibre of the Court, the existence of 49 approved candidates at this time suggests that there is no reluctance by qualified people to accept appointments to the Bench.

3. Separate Pension Provisions for Judges

The Judicial Council Report No. 3 suggests that pension arrangements should be separate and distinct from those of Public Servants. This was identified as a matter of maintaining judicial independence as well as providing the ability to structure judicial pensions to the particular needs of Judges. While the Judges' pension plan is currently administered with the general superannuation funds of the Province, the modifications afforded by the Provincial Court Act are, in our view, not insignificant. Because the present plan has been modified by virtue of the Provincial Court Act, we believe that statute may be used in the future to embody any elements of uniqueness which are considered appropriate. We cannot see the existing arrangement between the two statues having any impact on the principle of judicial independence, as long as the combination of those statutes yields a plan that meets the test of adequacy.

III. RECOMMENDATIONS (Pensions & Related Benefits)

A. PENSIONS

Having carefully considered the various presentations and submissions put before us and recognizing that pension benefits and their costs are an integral part of the total cost of the administration of justice in the Province, we wish to submit the following proposals to become effective January 1, 1989:

5. The current administration of pension benefits for Provincial Court Judges under the Pension (Public Service) Act, as modified by provisions of the Provincial Court Act, be continued. Once the modifications recommended herein have been implemented, the issue of adequacy will be properly addressed and any concerns about judicial independence will be eliminated.

6. The contribution level by Provincial Court Judges to the pension plan should remain at 7%. The concept of pension plans being contributory is, in our view, an important one and represents a relatively small portion of the total costs of the plan. In addition, the total contributions are deductible pursuant to Section 8(1) (m.1) of the Income Tax Act.

7. The calculation of pension benefits should be based on the best three years' earnings rather than a five-year average. With a review every two years now provided by statute, the anomalies which currently impact the entitlement calculation should be largely removed. (Schedule 2)

8. The early retirement option should be made available to Judges at age 55, instead of age 60, with a minimum ten years of actual service, pursuant to the Pension (Public Service) Act, without the application of the 5% penalty for each year of the retiree's age less than 60. (This would require appropriate amendments to the Provincial Court Act). The provision would accommodate

those Judges with fifteen or twenty years' service who would like to leave the Bench to pursue other interests, but are precluded from doing so by the present provisions.

9. The deferred pension option should be made available to Judges at age 55, instead of age 60, with ten years of service. Unlike Recommendation #8, receipt of actual pension would be deferred to age 60 or later. This, again, will accommodate those Judges who wish to leave the Bench at an earlier age without compromising too much of their pension entitlement.

10. We recommend that no change be made in the benefit options now available under the current plan. The available options represent the best way of meeting the diverse needs of the Judges at retirement. The personal financial resources of a lawyer appointed to the Bench at age 55 should be considerably different than those of a lawyer appointed to the Bench at age 40. The former has had an opportunity to take advantage of the highest earning years in practice, while the latter has devoted the prime earning years to judicial service. The options available within the plan provide an opportunity to obtain combinations of amounts and security of income which will best address the specific needs of the individual. It also follows that selection of an option which provides an income stream superior to that of a single life annuity has a higher cost. For the plan to be equitable, the more costly plans result in a lower monthly pension.

B. OTHER RETIREMENT BENEFITS

In addition to the pension plan, we have reviewed the ancillary benefit programs available to Judges, and we wish to make the following recommendations:

11. Group Life Insurance

Under the existing plan, group life insurance is provided at three times annual earnings which, based on current salary, is

$263,478.00 coverage and, if our recommendations as to salaries are implemented, will rise to $274,017.00 in 1989 and $284,979.00 in 1990. However, the coverage terminates at age 65, which results in the dissolution of a substantial estate asset. This may be particularly traumatic for survivors of retirees who die soon after retirement, without having completed the transition to the lifestyle of the senior citizen. We therefore recommend that this coverage be extended as follows:

(a) that coverage at three times earnings be extended to age 70 for those Judges who continue to serve on the Bench, with the existing cost sharing arrangement, and

(b) that the coverage be made available to retirees to age 70 at three times annual pension benefits, as determined under the plan, with full premiums payable by the retiree.

12. Long Term Disability Insurance

The long term disability provisions of the current coverage provide for a monthly payment equivalent to two-thirds of the first $2,200.00 of salary plus 50% of the balance. Because the premiums for this coverage are paid by the employer, any payments to a disabled Judge would be subject to income tax. At the current salary level, the maximum benefit to be derived under this plan would be $4,027.00 per month, while the same individual's pre-tax earnings would be $7,319.00 per month. We recommend that consideration be given, with concurrence of the Judges, that this portion of the benefits package be revised to provide coverage of 60% of gross income and that the Judges pay the premiums for this coverage so that the resulting benefits would be free of income tax. Currently, the alternative procedure would increase the after-tax disposable disability benefit by more than $1,300.00 per month. This is subject to the consent of the carrier of the plan.

13. Concluding Remarks

During the process of these deliberations, it was on more than one occasion, and in particular in the submissions of Mr. Harris on behalf of the Provincial Court Judges' Association, stated that when determining suitable compensation for Judges (his comments not being confined only to British Columbia Judges), Committees should not endeavour to establish linkage between performance and remuneration. It was stressed that a Judge's salary review is not relevant to the process afforded to governments in reviewing remuneration for public service employees, or to systems utilized by the private sector, where productivity is linked to compensation. In fact, it was stated that the Committee cannot, and should not, use normal compensation methodology which one would expect to employ in an exercise of this type were it involving non-judicial negotiations.

To the ordinary person, this is a position which would be difficult to accept, and for this Committee, two of whom are prominent business persons receiving their initial insight to the judicial systems, it is no easier to accept as being fact. That it may have been accepted policy by previous review committees in many jurisdictions does not necessarily infer that it is sacred.

Current statistical and other information is insufficient so as to establish definite correlation between a Judge's sitting hours and actual workload, although it is certainly not difficult to draw inferences.

Simply because there currently is no process of quantification available does not imply that none can be established. Creation of such systems would certainly provide a much more objective process within which to pursue compensatory reviews such as that currently before this Committee. It is even quite conceivable that production of acceptable statistical measures

could assist in eliminating, or at least alleviating, the current conceptions concerning judicial productivity.

Without dwelling at length, the concept prevails that the actual sitting hours of Provincial Court Judges, on a daily basis, are inadequate, and we tend to associate ourselves with the comments attributed to Mr. Justice Zuber as cited on Page 60 in the report of the Ontario Provincial Courts Committee where, in part, he recommended five hours as an appropriate normal sitting day for Provincial Court Judges. Naturally, for those Judges required to do extensive travelling to the Court sites outside of their own immediate location, travel time must be taken into consideration.

The role of Trial Co-Ordinators has been seen as some assistance in this regard, but their utilization and authority must be enlarged upon. In one major centre in the Province, there is not even any provision for a Trial Co-Ordinator.

The assigning of Chambers day - one day per week - without any apparent regard to their need, or to the local workload, is questionable. By and large it appears that a Chambers day is considered as another holiday.

Should some type of productivity process be considered, and we recommend that it should, it is obvious it would require to be a joint exercise between the judiciary and administration, and is not something that the Government could implement in complete isolation.

Respectfully submitted

D.J. Kidd
(Chairman)

Joe Hutton
(Member)

Oksana Exell
(Member)

SCHEDULE 1

COMPENSATION COMMITTEE

CALCULATION OF DISPOSABLE INCOME FOR A PUISNE JUDGE

ASSUMPTIONS:

1. Employment earnings only.
2. Full spousal deduction.
3. Cash cost of term insurance for coverage of 2 times annual salary in 1988 and 3 times annual salary in 1989 and 1990, less the first $40,000.00 coverage.
4. Taxable benefit of term insurance coverage of $15,000.00.
5. Maximum contributions to pension plan.
6. 1988 Income Tax rules applied.

CALCULATION:

		1988	1989	1990
Employment Income		$ 87,826	$ 91,339	$ 94,992
Add:	Taxable Benefit (4)	43	43	43
		87,869	91,382	95,035
Less:	Pension Plan Contribution 7% of Employment Income	6,157	6,402	6,658
		81,712	84,980	88,377
Income Taxes		27,041	28,506	30,027
After-Tax Income		54,671	56,474	58,350
Deduct:	C.P.P. Premium	478	478	478
	U.I. Premium	691	691	691
	Group Insurance Premium (3)	391	674	706
Net Disposable Income		$ 53,111	$ 54,631	$ 56,475

"SUBJECT TO VERIFICATION"

SCHEDULE 2

COMPENSATION ADVISORY COMMITTEE
CALCULATION OF DISPOSABLE PENSION INCOME IN YEAR OF RETIREMENT

ASSUMPTIONS:

1. Pension calculation based on current pension provisions, except:
   (a) earnings basis is last, or best, three years' salary for a Puisne Judge, including amounts previously paid pursuant to the Judicial Benefits Act;
   (b) retiree is assumed to be age 65; and
   (c) retirement date is January 1.
2. Retiree is able to claim a full spousal deduction.
3. Group term insurance continues to age 70 with retiree receiving a taxable benefit for $15,000.00 coverage and paying premiums on coverage exceeding $40,000.00.
4. 1988 provisions have been applied for income tax, Canada Pension Plan, and Old Age Security calculations.

CALCULATION:

Year of Retirement, Jan. 1	1989		1990		1991	
Actual Service	15 yrs.	23.3 yrs.	15 yrs.	23.3 yrs.	15 yrs.	23.3 yrs.
Pensionable Service	22.5 yrs.	35 yrs.	22.5 yrs.	35 yrs.	22.5 yrs.	35 yrs.
Average Earnings	$ 83,710	$ 83,710	$ 87,603	$ 87,603	$ 91,386	$ 91,386
Basic Pension	37,670	58,597	39,421	61,322	41,124	63,970
Less: C.P.P. Offset	2,783	4,322	2,783	4,322	2,783	4,322
Net Pension	34,887	54,275	36,638	57,000	38,341	59,648
Add: C.P.P.	6,517	6,517	6,517	6,517	6,517	6,517
O.A.S.	3,780	3,780	3,780	3,780	3,780	3,780
Taxable Benefit	43	43	43	43	43	43
Gross Income	45,227	64,615	46,978	67,340	48,681	69,988
Income Taxes	10,342	18,576	11,045	19,797	11,730	20,984
Disposable Income	34,885	46,039	35,933	47,543	36,951	49,004
Less: Term Insurance	86	197	201	377	216	438
Net Disposable Income	$ 34,799	$ 45,842	$ 35,732	$ 47,166	$ 36,735	$ 48,566
% Final Salary	39.62%	52.20%	39.12%	51.54%	38.67%	51.13%
% Final Disposable Income	65.56%	86.37%	65.45%	86.22%	65.09%	86.05%

"SUBJECT TO VERIFICATION"

SCHEDULE 3

DOCUMENTATION REVIEWED BY ADVISORY COMMITTEE

1. Provincial Court Act, R.S.B.C. 1979, Chapter 341

2. Report and Recommendations of the Compensation Advisory Committee of the year 1986.

3. Complete transcript, including all submissions, from 1986 Advisory Committee hearings.

4. Report and Recommendations of the 1986 Federal Commission on Judges' Salaries and Benefits, as submitted to the Minister of Justice of Canada on February 27, 1987.

5. Report of the Ontario Provincial Courts Committee, 1988.

6. Report of The Justice Reform Committee 1988 (Province of British Columbia report "Access to Justice").

7. Official Report of the Select Standing Committee on Labour, Justice and Intergovernmental Relations covering meeting of June 18, 1987; subsequent First Report to Legislature from this Committee, dated June 26, 1987; and copies of Orders in Council struck implementing Committee recommendations.

8. 1988 Judicial Survey, as provided by the Canadian Association of Provincial Court Judges.

9. Condensed report of Judges' salaries and benefits for all Provinces, as co-ordinated through the office of the Attorney General, Province of Alberta.

10. 1988 Executive Salaries and Benefits Survey as compiled by the Canadian Society of Association Executives.

11. Reports on Consumer Price Indexes from August to December, 1988, as provided by Ministry of Labour and Consumer Services, Province of British Columbia.

12. Documentation concerning Availability, Age and Experience and other historical information as provided by the office of the Chief Judge.

13. Provincial Court of British Columbia Workload Statistics for years 1985 to September 1988, as compiled by the Court Services Branch, Ministry of Attorney General.

14. Copy of magazine article "The Hidden Dangers of Judicial Burnout", as provided by the office of the Chief Judge.

15. Documentation relating to salaries of British Columbia Provincial Court Judges from the years 1974 to 1988; outline of latest County Court salaries, as co-ordinated through the office of the Ministry of Attorney General.

16. Report No. 3 of the Judicial Council of British Columbia, and other related correspondence, concerning pensions for the Provincial Court Judges.

17. Booklet "Public Service Superannuation Plan as it Pertains to Provincial Court Judges", as provided by the Superannuation Commission.

18. Submission, and Appendices to Submission, of His Honour Chief Judge I. Bruce Josephson, presented to Advisory Committee on December 13, 1988.

19. Submission of the Law Society of British Columbia, presented to the Advisory Committee by Dennis Mitchell, Q.C., on December 13, 1988.

20. Submission of the Provincial Court Judges' Association of British Columbia, presented to the Advisory Committee by Mr. Eric Harris on December 14, 1988.

21. Daily transcripts of hearings before the Advisory Committee on December 13 and 14, 1988.

22. Nova Scotia Judicial Tribunal - January 20, 1989.

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